Jones (1886) 29 Fed. 193; *Railroad Co.* v. *Copper Co.* (1885) 25 Fed. 515. In *Boom Co.* v. *Patterson* and in the *Removal Cases* the suits were removed to the federal courts after condemnation and on appeal as to whether proper compensation had been decreed by the legislative tribunal. This was the sole question determined by the court, though it seems that the question of due process of law, public use, or any other constitutional restriction might just as well have been heard by the federal court, and the decree of condemnation allowed only on condition of compliance with the judgment of the court on that question. See *Warren* v. *Railroad Co.*, supra. In *Searle* v. *School Dist. No. 2*, supra, as in the principal case, the body appointed by the legislature to exercise its authority was a court, and the legislature prescribed in part the ordinary rules of a suit at law for the government of the court on this question. The Supreme Court held it to be a suit within the Judiciary Act, and removable to the federal courts before judgment in the state court. But no state court other than the one appointed, even though of general jurisdiction, could have decreed a condemnation, *Kohl* v. *United States*, supra, 375, nor had rights vested under the statute, as in *Railroad Co.* v. *Whilton*. See In re *Northampton* (1893) 158 Mass. 299. In such a case it would seem that the federal courts might determine the question of what would be a proper compensation, but it is difficult to see how its decree of condemnation could be of any effect without a subsequent ratification by the state legislature. See *United States* v. *Jones* (1883) 109 U. S. 515.

DESTRUCTIBILITY OF TRUSTS UNDER THE NEW YORK REVISED STATUTES.—At common law a court of equity could decree the dissolution of a trust when the legal and equitable estates had merged. *Tilton* v. *Davidson* (1903) 98 Me. 55. This might occur either by a release from the life beneficiary to the remainderman absolutely entitled, *Radcliffe* v. *Bewes* [1892] 1 Ch. 227, or by a conveyance from the latter to the former. *Sharpless' Estate* (1892) 151 Pa. St. 214. On Jan. 1, 1830, the New York Revised Statutes took effect, creating a new and peculiar system of uses and trusts, and providing that the beneficiary's interest should be inalienable. 1 R. S., c. 730 § 63. This provision rendered a trust indestructible during the time for which it was created. *Asche* v. *Asche* (1889) 113 N. Y. 232. The cestui could not assign his interest, *Hawley* v. *James* (1836) 16 Wend. 61, 165; the trustee could not terminate the trust by a conveyance to the beneficiary, nor had the Supreme Court power to authorize its destruction. *Douglas* v. *Cruger* (1880) 80 N. Y. 15. The statute, however, affected only trusts created after its passage. *Dyett* v. *Central Trust Co.* (1893) 140 N. Y. 54. On April 21, 1893, Section 63 was amended (Laws 1893, c. 452) so as to allow a cestui of "any trust heretofore or hereafter created for the receipt of rents and profits of lands or the income of personal property" who has, or may become entitled to the remainder, to release to himself, as remainderman, all his interest in the equitable estate, and thus to destroy the trust by merger of the two interests. It is noteworthy that this provision is expressly retroactive. On Oct. 1, 1896, Section 63, as thus amended

was embodied, substantially, in the Real Property Law (Laws 1896, c. 547 § 83) and on Oct. 1, 1897, in the Personal Property Law. Laws 1897, c. 417 § 3. In these enactments, however, it is significant that the words "of any trust heretofore or hereafter created" were omitted. The question has recently arisen whether the above provision of the Personal Property Law of 1897 is retroactive. In a trust to pay the income of personalty to the testator's wife for life or until she remarry, remainder to her children, it was held by the Court of Appeals that Section 3 was not retroactive and that the trust was not terminated by assignments to the widow of the interests of the children as remaindermen, followed by a release from the widow to herself of her interest in the income. The trust was created in 1892, at which time the cestui's interest was inalienable, and the assignment was in February, 1903. *Metcalfe* v. *Union Trust Co.* (1905) 181 N. Y. 39. There were three principal grounds for the decision. First, all the judges save CULLEN, C. J., who dissented, agreed that the Legislature intended Section 3 to act prospectively only. It may be regarded as settled, therefore, that Section 3 of the Personal Property Law of 1897, and, by analogy, Section 83 of the Real Property Law of 1896, are not retroactive. Second, the fact that the widow's equitable life estate was conditional was held to evidence an intention on the part of the testator to make her interest inalienable; and, finally, Judges BARTLETT and VANN were of opinion that the legal title, vested in the trustee until the execution of the trust, is property of which he cannot be constitutionally deprived without his consent; Judges GRAY, O'BRIEN and CULLEN were contra, and Judges HAIGHT and WERNER did not vote. See *Oviatt* v. *Hopkins* (1897) 20 N. Y. App. Div. 168; *Cuthbert* v. *Chauvet* (1893) 136 N. Y. 326.

If the trustee and all the beneficiaries consent, it has been unequivocally held that a statute permitting the termination of the trust violates no contract right, *Cochran* v. *Van Surlay* (1838) 20 Wend. 365; *Williamson* v. *Suydam* (1867) 6 Wall. 723, and even without his consent it would seem to violate no property right in the trustee. His title is a naked right which he holds solely for the cestui's benefit; it is representative, not personal, and is property which the courts will protect as such only when he asserts his right for the cestui's benefit, and not when he does so for his own. *Thom's Exrs.* v. *Thom* (1897) 95 Va. 413; *Whall* v. *Converse* (1888) 146 Mass. 345. Though he resist, he is removable by the court at its discretion. Perry on Trusts, 5th ed. 276. His right to commissions is given by statute, and except as to commissions already earned, may be withdrawn by the Legislature. Upon his death his title in New York does not pass to his heirs, but vests in the Supreme Court. R. P. L. § 91; P. P. L. § 8. Here are none of the attributes of property as the word is used in the constitutions; it is not used in "any narrow or technical sense, or as importing a power of legal control merely, but rather as implying a vested interest which it is right and equitable that the government should recognize and protect and of which the individual could not be deprived arbitrarily without injustice." Cooley, Const. Lim., 7th ed., 508, 149 note; *Ref. Dutch Church* v. *Mott* (1838) 7 Paige 77. The court being divided upon the question, it is impossible to say whether the amendment of 1893, which is expressly retroactive and which permits destruction by merger, would be treated by the court as

constitutional if the question were squarely raised in either of the following ways: (1) an attempt between April 21, 1893, and Oct. 1, 1896 to destroy by merger a trust of realty created prior to April 21, 1893, or (2) a like attempt, prior to Oct 1, 1897, to destroy a trust of personalty created prior to April 21, 1893. The tendency in New York seems to be to question the constitutionality of a retroactive statute in such a case. *Cuthbert* v. *Chauvet*, supra; *Oviatt* v. *Hopkins*, supra. On March 25, 1903, Section 63 was again amended by repealing the amendments of 1893, 1896 and 1897, thus placing the law in the same condition as in 1830. This act was expressly declared not retroactive.

The destructibility of a trust in New York therefore seems to depend on the date of its creation. Trusts created prior to January 1, 1830, are destructible by any method known to the common law. Trusts created between January 1, 1830, and April 21, 1893, are indestructible; but it seems to be an open question whether destruction of such a trust would be allowed if a merger were attempted, or was alleged to have occurred by law, between April 21, 1893, and Oct. 1, 1896, if realty, or between April 21, 1893, and Oct. 1, 1897, if personalty, during which periods Section 63 was expressly retroactive. Trusts of either realty or personalty, created between April 21, 1893, and March 25, 1903, are destructible. Trusts created since March 25, 1903, are indestructible.

EMPLOYER'S LIABILITY BASED ON STATUTORY CLASSIFICATION OF EMPLOYEES.—A statute of the state of Ohio provided that railroad companies should be liable to employees exercising no authority, when injured through the negligence of employees exercising authority, though the injured employee was in no way under the authority of the negligent one, and though their respective employments were in different branches of the service. In an action by a fireman against the company for injuries received through the negligence of an engineer on another locomotive, the statute was attacked as unconstitutional in denying the equal protection of the laws. It was argued that it allowed recovery to the fireman, but denied it to the engineer of the same locomotive, though both were injured by the negligence of one in authority over neither. The statute was sustained, the Court holding that there was reasonable ground for the classification made; and that the public welfare was promoted by making railroad companies especially careful in selecting their superior employees. *Kane* v. *Erie R. R. Co.* (1904) 133 Fed. 681.

The Fourteenth Amendment to the Constitution does not require that all laws be universally applicable; but that there be equal laws for equal conditions. Freund, Police Power, § 611. It leaves to the state the power to classify according to those conditions, and requires that the law be equally applicable to all within a class. *G. C. & S. Fe R. R. Co.* v. *Ellis* (1896) 165 U. S. 150. But the classes must exist independently of the statute, i. e., the classification must be a natural and not an arbitrary one. A statute which provided for the regulation of grain elevator rates in Chicago was upheld because of the peculiar danger of natural monopoly in that business in Chicago. *Munn* v. *Illinois* (1876) 94 U. S. 391; see *Brass* v. *N. Dakota* (1894)